

1-5-2012

Wasden v. State Board of Land Commissioners Augmentation Record Dckt. 39084

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Recommended Citation

"Wasden v. State Board of Land Commissioners Augmentation Record Dckt. 39084" (2012). *Idaho Supreme Court Records & Briefs*. 3367.
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In the Supreme Court of the State of Idaho

HON. LAWRENCE G. WASDEN, in his
capacity as Attorney General of Idaho, ex rel.
STATE ENDOWMENT LAND
BENEFICIARIES,

Plaintiff-Appellant-Cross Respondent,

v.

STATE BOARD OF LAND
COMMISSIONERS, and GEORGE BACON, in
his official capacity as Director of the IDAHO
DEPARTMENT OF LANDS,

Defendants-Respondents-Cross
Respondents,

and

GLADYS BABCOCK, et al.

Defendants-in-Intervention-
Respondents-Cross Appellants,

and

PRIEST LAKE STATE LESSEES
ASSOCIATION, INC.,

Defendant Intervenor-Respondent-
Cross Respondent.

GLADYS BABCOCK, as Trustee of the
BABCOCK TRUST, et al.

Plaintiffs-Cross Appellants.

v.

IDAHO BOARD OF LAND
COMMISSIONERS and GEORGE BACON,
In his official capacity as Director of the IDAHO
DEPARTMENT OF LANDS,

Defendants-Cross Respondents.

ORDER GRANTING STIPULATION TO
AUGMENT

Supreme Court Docket No. 39084-2011

Ada County District Court No. 2010-23751

Ref. No. 11-666

Valley County District Court No. 2010-436

LAW CLERK

ORDER GRANTING STIPULATION TO AUGMENT - Docket No. 39084-2011

A STIPULATION TO AUGMENT with attachment was filed by counsel for the parties to this appeal on December 22, 2011, requesting this Court for an order augmenting the appellate record in this appeal with the document attached to this motion. Therefore, good cause appearing,

IT HEREBY IS ORDERED that the parties' STIPULATION TO AUGMENT be, and hereby is, GRANTED and the augmentation record in the above entitled appeal shall include the document listed below, a copy of which was attached to this Stipulation:

1. Correspondence from Colleen D. Zahn of Hall, Farley, Oberrecht & Blanton, P.A. to the Honorable Deborah A. Bail ("Correspondence") dated December 17, 2010.

DATED this 5th day of January, 2012.

By Order of the Supreme Court

cc: Counsel of Record

Stephen W. Kenyon
Stephen W. Kenyon, Clerk

AUGMENTATION RECORD

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*With Attorneys Admitted to Practice Law in
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December 17, 2010

BY FAX 287-7529 Attn: Tara

The Hon. Deborah A. Bail
District Court Judge
County of Ada
200 W. Front
Boise, Idaho 83702

*Re: Wasden v. Idaho Board of Land Commissioners, et al.
Ada County Case No. CV-OC 2010-23751
HFOB No. 4-682.1*

Dear Judge Bail:

We write on behalf of our clients, Defendants-in-Intervention Babcock, et. al., to advise the Court of our clients' objections to the proposed Order Granting Preliminary Injunction, which has been or soon will be submitted to the Court by Plaintiff, the Idaho Attorney General.. During discussions with counsel for the Attorney General, Idaho State Land Board and Idaho Department of Lands, we requested the inclusion of language that would clarify the proposed Order does not impact our clients' contractual rights as the holders of leases which are the subject of this litigation. The requested clarification is necessary in order to make clear that the preliminary injunction is not intended to affect our clients' rights under the existing leases, or prevent them from remaining in possession of the leased premises after the expiration of the current lease period on December 31, 2010, in the event the Land Board and Department of Lands have not renewed our clients' leases.

With only 2 weeks remaining before the expiration of the current lease period, such clarification is necessary in light of I.C. § 58-312, which makes it a misdemeanor to hold over on state lands after the expiration of the lease term and without a current lease agreement. Our clients should not be subject to criminal prosecution in the event the Land Board and Department of Lands have not taken action within the next 2 weeks to address issues concerning their lease rights and

continued occupancy/possession. Given that two major holidays fall within the next 2 weeks, it is quite possible that the Land Board and Department of Lands will not have time to reach a consensus on how, in light of the Court's Preliminary Injunction, to handle the issue of possession of the leased premises following expiration of the existing leases on December 31.

Clarification is also necessary given the substantial investments our clients have made in the improvements on their parcels. Many of our clients have invested significant sums of money to construct, improve and maintain improvements on the leased parcels. Once a final determination is made in this matter, our clients will need time to receive and review documentation from the Court, the Land Board, the Department of Lands and/or other agencies or entities concerning the final decision in this matter, how that decision affects their rights and how the State intends to move forward with administering their leases. Our clients will require time to process this information and determine how to proceed. We have suggested a 6 month period for this analysis and consideration, which is consistent with other required notice periods for the leases, such as the legislature's requirement set forth in I.C. § 58-304 that the Land Board give lessees six months notice of any changes in the amount of rent to be charged.

With those purposes in mind, we propose the addition of the following two paragraphs to the Court's Order Granting Preliminary Injunction:

6. Enjoining Defendant Bacon from distributing the proposed leases is not intended to adversely affect or negate any of the current lessees' contractual rights granted by the existing leases. The holders of existing leases and their guests, representatives and agents will be permitted to remain in lawful possession of the leased properties until the 181st day following the Court's entry of a final judgment that fully resolves the claims of all parties in this matter. While this Order remains in effect, the lessees will remain in lawful possession of the leased properties, subject to the terms and conditions of the existing leases, including the existing rent formula.

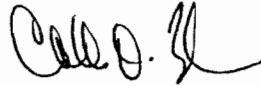
7. The holders of existing leases and their guests, representatives and agents will not be charged with violation(s) of, or otherwise alleged to have violated I.C. § 58-312, which prohibits individuals from holding over on state land after expiration of their leases and makes it a misdemeanor to do so. In this matter, the current leases describe the lease period as ending on December 31, 2010.

December 17, 2010
Page 3

This language does not expand the scope of the injunction or otherwise add new issues that were not covered during the hearing. Instead, it clarifies the Lessees' rights during the period of the preliminary injunction.

Thank you for your consideration of our objections. We are happy to provide any additional information you may require after considering these matters.

Respectfully,



Colleen D. Zhan

CDZ/kat

cc: Merlyn Clark/D. John Ashby (by email)
Clay R. Smith/Steven L. Olsen (by email)